



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Deanna J. Santana  
Christopher M. Moore  
Joseph Horwedel  
Jennifer A. Maguire

**SUBJECT:** MEDICAL MARIJUANA

**DATE:** April 1, 2011

Approved

Date

4/1/11

## RECOMMENDATION

- (a) Adoption of a resolution to initiate amendments to Title 20 of the San José Municipal Code (the Zoning Code) to establish land use regulations pertaining to Medical Marijuana Collectives and to establish a Zoning Verification Certificate process, to forward these proposed Title 20 amendments to the Planning Commission for its report and recommendation, and to set a public hearing date on these proposed amendments to Title 20 before the City Council;
- (b) Approval of an ordinance of the City of San Jose amending Title 6, Business Licenses and Regulations, of the San Jose Municipal Code to add Parts 1, 2 and 3 of a new Chapter 6.88 to establish a registration process pertaining to Medical Marijuana Collectives;
- (c) Approval of an ordinance of the City of San Jose amending Title 6, Business Licenses and Regulations, of the San Jose Municipal Code to add Parts 4 through 9 of a new Chapter 6.88 to establish regulations pertaining to Medical Marijuana Collectives and to the individual cultivation and use of medical marijuana;
- (d) Direction to staff to issue a Manager's Budget Addendum (MBA) to establish an appropriate FY 2011-2012 staffing plan, amendments to the Schedule of Fees and Charges to include an Annual Operating Fee, amendments to the Schedule of Fines, to be considered as part of the Mayor's June Budget Message; and,
- (e) Adoption of a resolution to amend the Adopted 2010-2011 Schedule of Fees and Charges Resolution (Resolution 72737, as amended) to add a Medical Marijuana Collective Application Processing Fee at \$2,400 per Collective.

## BACKGROUND

On March 9, 2011, Vice-Mayor Nguyen and Councilmembers Herrera, Liccardo and Constant presented a memo to the Rules & Open Government Committee (Rules Committee) which recommended that City Council consider action on: (1) Establishment of a maximum number (cap) of 10 medical marijuana collectives and cooperatives that will be permitted to operate within the City of San José; (2) Creation of a streamlined application process for medical marijuana collectives and cooperatives to operate legally within the City of San José, for immediate implementation; and, (3) All other medical marijuana and/or cannabis collectives, cooperatives, dispensaries, operators or business above and beyond the cap shall cease all operations within a specific period, such as 30 or 60 days.

**HONORABLE MAYOR AND CITY COUNCIL**

**Subject:** Medical Marijuana

April 1, 2011

Page 2 of 9

The Rules Committee reviewed and discussed the memo and directed staff to return to the Council on April 12, 2011 with the draft ordinances staff previously presented to the Council in December 2010. The Rules Committee then requested that staff attach to the December 2010 documents a supplemental memo highlighting any changes staff made to the December 2010 draft ordinances based on feedback that day from the Rules Committee and based on feedback from a future March 17, 2011 meeting before the Public Safety, Finance and Strategic Support Committee (PSFSS Committee). In addition, the Rules Committee directed staff to bring to Council the option of adopting any or all of the December 2010 draft ordinances including: 1) the land use regulations, 2) the registration process and 3) the operational regulations (e.g. monitoring and enforcement). The Rules Committee directed staff to include in any registration process the requirement that all Collectives comply with the Measure U – Marijuana Business Tax (a gross receipts tax) approved by the voters in November 2010. Finally, Mayor Reed proposed an idea of auctioning the proposed 10 “slots” to operate a Medical Marijuana Collective. The City Attorney will respond separately about whether this is permissible.

While this memo responds to the recent Rules Committee and PSFSS Committee discussions, it is important to note that staff has prepared comprehensive reports regarding a complete Medical Marijuana regulatory program, which were presented in June and December 2010. The City Attorney’s Office also has prepared extensive analyses of the complex legal environment regarding medical marijuana (See Council Agenda Items: June 22, 2010, Item 3.10 and December 13, 2010, Items 1-3). The links to these previously distributed reports should be considered in your review of this memorandum and can be found in three different locations on the City’s website:

- (1) **December 14 City Council Study Session on Medical Marijuana** (See Link: <http://www.sanjoseca.gov/clerk/Agenda/20101214/20101214a.pdf>)
- (2) **June 22 City Council Meeting, See Item 3.10** (See Link: <http://www.sanjoseca.gov/clerk/Agenda/20100622/20100622a.pdf>)
- (3) **Medical Marijuana Website** (See Link: <http://www.sanjoseca.gov/medicalmarijuana.asp>)

Last, in September 2010, the Governor signed Assembly Bill No. 2650 into law which prohibits the location of any medical marijuana establishment (e.g., cooperative, collective, dispensary, etc.) within a 600-foot radius of any public or private school that provides instruction to kindergarten through 12<sup>th</sup> grade. This law expressly states that cities may “further restrict the location or establishment of these medical marijuana establishments.”

***Summary of Public Safety, Finance and Strategic Support Committee***

On March 17, 2011, staff presented to the PSFSS Committee the part of the December 2010 draft ordinances that dealt specifically with land use provisions for Medical Marijuana establishments – the ordinance amending Title 20. The PSFSS reviewed the materials and Vice Mayor Nguyen requested that on April 12, 2011, staff bring to the City Council an analysis of the feasibility of Medical Marijuana establishments locating in Light Industrial Zones (see ANALYSIS section). She further inquired whether there were any cities in California that required on-site cultivation of Medical Marijuana. No additional direction was provided by the PSFSS Committee on March 17th. Instead, Councilmember Oliverio requested information from staff on how other cities were handling Medical Marijuana establishments; specifically, whether they were banning them, had issued moratoria or were permitting and regulating them. Below is staff’s response regarding the Committee’s inquires:

**HONORABLE MAYOR AND CITY COUNCIL**

**Subject:** Medical Marijuana

April 1, 2011

Page 3 of 9

**On-Site Cultivation:** In the June and December 2010 draft ordinances, staff proposed that Collectives be allowed to have only on-site cultivation. Today, staff believes that requiring on-site cultivation is still the best option for a number of reasons noted below:

- Helps to definitively determine where the Medical Marijuana originates and to whom it is being provided –a “closed loop” system.
- Facilitates single-site regulation, thus keeping regulatory enforcement costs low during a period of limited resources while promoting improved regulation at a point in time where staff has clearly acknowledged that there is a learning curve with regulating Medical Marijuana Collectives.
- Addresses the concerns that Medical Marijuana is originating from sources that support criminal activity, is being grown with chemicals and substances that could be harmful, and/or is being grown in residential homes that have been converted into illegal “grow-houses.”

Staff has looked to a variety of other cities in California on this issue. Some allow both on-site and off-site cultivation as options while others ban on-site cultivation altogether. The following information does not reflect all cities in California, only the benchmarking that staff was able to complete within existing time constraints and with limited staff.

**Table 1: Summary of Cultivation Options for Other California Cities**

<b>City</b>	<b>Cultivation Option</b>
Berkeley	On or off-site cultivation permitted. If off-site, and in a place that is visible with the naked eye from any public or other private property (excludes secure rooftops or balconies that are not visible from other buildings or land), is allowed to cultivate 10 plants at one time on a single parcel or adjacent parcels of property.
Long Beach	On or off-site cultivation, must occur within the City of Long Beach.
Napa	On or off-site cultivation. On-site cultivation requires only indoor, not exceeding 100 sq. ft. and each plant must be boxed individually. Off-site cultivation requires an “Aggregated Offsite Cultivation Permit.”
Oakland	On or off-site cultivation. <i>Note:</i> Off-site large-scale industrial cultivation currently suspended pending further review by the City Council.
Sacramento	Off-site cultivation only.
San Francisco	On or off-site cultivation. If cultivation is on-site, it must be conducted indoors.
Richmond	On or off-site cultivation.
Sebastopol	On or off-site cultivation. If on-site, requires that no more than 750 sq. feet additional square footage may be permitted.
Stockton	Off-site cultivation only.

**Statewide Number of Ordinances, Moratoriums and Bans:** In response to Councilmember Oliverio’s request that staff provide information regarding the number of medical marijuana ordinances, moratoriums and bans in place currently in Cities and Counties in California, staff compiled data from both Americans for Safe Access and the California Police Chief’s Association. This information has not been verified and it is unknown why there are discrepancies between the two reporting sources.

**HONORABLE MAYOR AND CITY COUNCIL**

**Subject: Medical Marijuana**

April 1, 2011

Page 4 of 9

**Table 2: Statewide Number of Ordinances, Moratoriums and Bans**

<b>Status/Type</b>	<b>Americans For Safe Access (Dated: 2/18/11)</b>	<b>California Police Chiefs' Association (Dated: 2/9/11)</b>
City Ordinances	42	42
County Ordinances	9	10
City Moratoriums	103	88
County Moratoriums	15	10
City Bans	143	216
County Bans	12	12

**ANALYSIS**

To ensure that Collectives do not continue to operate in the City completely unregulated, staff continues to recommend approval of a complete regulatory program that includes: 1) initiation of the amendments to Title 20 to address land use regulations, 2) the registration process and 3) the operational regulations (e.g. monitoring and enforcement), with the associated cost recovery program (e.g. Annual Operating Fee and Staffing Plan). In response to the Rules Committee direction, the City Council can separate the proposed resolutions and ordinances and take incremental action (see Policy Option 1) or approve a complete regulatory program comprised of three key policy areas (see Policy Option 2), e.g., land use, registration, and operational regulations. For more information on the ordinances brought before Council in December 2010, please refer to the Tab 2 section of the December 2010 Study Session Memorandum dated December 8, 2010. Policy Options 1 and 2 are easily differentiated in Table 3 below:

**Table 3: Summary of Policy Options**

<b>Regulatory Category</b>	<b>Description</b>	<b>Policy Option 1 (Requires Adoption of Staff Recommendations)</b>	<b>Policy Option 2 (Requires Adoption of Staff Recommendations)</b>
Where	<b>Land Use Regulations:</b> Title 20 provides land use regulations which establishes the zoning districts where Medical Marijuana Collectives can locate in the City.	(a)	(a)
Who	<b>Registration Regulations:</b> Title 6, Section 6.88.300 through 6.88.390 provides regulations for who is eligible to operate a Medical Marijuana Collective.	(b) and (e)	(b) and (e)
How	<b>Operating Regulations:</b> Title 6, Sections 6.88.400 through 6.88.470 provides regulations for how Medical Marijuana Collectives should operate, including public safety measures.		(c) and (d)

While it would be easier from a workload and staff capacity perspective to have the City Council direct that no part of the ordinances go into effect until the City Council has acted on all parts of a complete regulatory program, staff has developed a process to facilitate incremental policy development should the City Council prefer this approach. For example, prior to implementing any part of the package approved or adopted by Council, the Collectives should be required to agree that they will comply with all parts of the ordinances, however much later in time those parts should be adopted by Council. For

**HONORABLE MAYOR AND CITY COUNCIL**

**Subject:** Medical Marijuana

April 1, 2011

Page 5 of 9

example, if Council were to adopt a resolution initiating the process to amend the Title 20 to reflect new zones where the Collectives can locate (land use regulations) and/or adopt the part of the draft ordinance dealing with who can operate Collectives in the City (registration regulations), staff would request that part of the registration process require each Collective to agree to comply with any regulations later adopted by Council which dictate how Collectives are to operate. As already stated, staff continues to recommend approval of a complete regulatory program (as reflected in the City Council Agenda Recommendation).

***Changes to Zoning Ordinance (Title 20)***

While staff initially proposed the Commercial General Zoning District, a set of sensitive uses to guide distance and location requirements, along with a maximum of 10 Medical Marijuana Collectives, staff is now bringing forward a different approach which revises the sensitive uses to take into consideration the legislature's passage of Assembly Bill No. 2650 which restricts Collectives from locating within 600 feet of private and public schools with grades kindergarten through 12<sup>th</sup> grade. To guide the City Council discussion and decision-making process, direction on each of the following issues is needed:

- Zoning districts for medical marijuana establishments in the event those are allowed in the future;
- Distance requirements from sensitive uses;
- Cultivation considerations;
- Land use "approval" mechanism (i.e., zoning verification versus Conditional Use Permit);
- Noticing requirement;
- Non-transferability;
- Maximum number of collectives;
- Policy options for a ban and/or moratorium; and,
- Code enforcement.

Currently, staff believes that light industrial is the least desirable choice to place Collectives due to inherent conflicts with the allowed uses within that zone, the minimal availability of public transit in the zone and late night uses already allowed in that zone. Staff further believes that there are several other commercial and industrial zoning districts including the Downtown Core (DC), Combined Industrial/Commercial (CIC) and Industrial Park (IP), which should be considered as proper areas for Collectives and staff is requesting further direction from Council to guide the development and presentation of maps which could show the eligible sites based on different zoned areas. The maps, in turn would further assist the Council in its decision regarding the proper zones for Collectives to locate.

With regard to the requirement regarding separation from sensitive uses, staff is concerned that large separation requirements will force Collectives into light and heavy industrial areas, areas which for reasons already discussed are the least desirable. As such, staff is seeking further direction from the Council on each of the sensitive uses previously proposed in the December 2010 draft ordinances.

***Changes to the Registration and Regulatory Ordinance (Title 6)***

**Lottery & Registration:** In order to determine which Collectives would be afforded the opportunity to operate in the City, staff initially proposed a 2-part process. First, all Collectives interested in becoming registered with the City had to participate in a lottery held by the Chief of Police. However, participation in the lottery itself required Collectives go through a minor qualification process. If

**HONORABLE MAYOR AND CITY COUNCIL**

**Subject:** Medical Marijuana

April 1, 2011

Page 6 of 9

Collectives passed that process, they could participate in the lottery. Once the results of the lottery were posted, those Collectives that received lottery numbers within the maximum number of Collectives allowed by the City could then submit an application to the Chief of Police to register with the City. Those applications would be reviewed by the Chief of Police, in the order determined by the lottery, for compliance with the requirements of the Code. This process did not include an Application Processing Fee because it assumed that the City Council would adopt a complete regulatory program, which included a staffing plan to support this effort.

Upon the March 9 Rules Committee discussion, staff is now bringing forward an approach which allows **all** Collectives to participate in the lottery, requires a greater level of front-end due diligence on the part of the applying Collectives, and includes an Application Processing Fee to cover the costs of supporting the Lottery effort. In addition, at the Police Department's suggestion, the City Manager's Office will now oversee this effort. The change from Chief of Police review to City Manager review was initiated to allow for coordination and oversight with the variety of City departments required to confirm compliance with the Code during the registration review process, including the Police Department, Finance Department, Planning, Building and Code Enforcement Department, Office of the City Attorney's Office, when appropriate, the City's Downtown Manager.

In order to determine which 10 Collectives get selected, the City Manager's Office, at a designated date and time, will make applications available to the public. Staff will be prepared to administer an application process that is based on Parts 1, 2 and 3 of a new Chapter 6.88 to establish a registration process pertaining to Medical Marijuana Collectives. This process would require interested Collectives to:

- (1) Complete fully all requested information on the final Application Form, including information to determine criminal history and experience with operating a medical marijuana establishment in San Jose or in other cities for all individuals involved in an application will be required;
- (2) Obtain in advance a zoning certification from PBCE to show that the Collective is located within an authorized area and to submit separately the payment for this land use verification;
- (3) Obtain in advance proof of payment and compliance with all applicable City business taxes, including the Measure U-Marijuana Business Tax (a gross receipts tax codified at Chapter 4.66 of the Code) and the City's operational business tax found at Chapter 4.76 of the Code;
- (4) Submit an Application Processing Fee; and,
- (5) If the City Council adopts operating regulations, the Application Form would be amended to capture additional information contained in the operating requirements (e.g., submission of operational, management and security plans and identification of on-site managers, etc.). If the City Council does not adopt operation regulations, staff will include the previously referenced Affidavit that requires that each Collective agree to comply with any regulations later adopted by Council which dictate how Collectives are to operate.

As completed applications are submitted, a lottery number will be assigned to each application and provided to the applicant. A lottery will then be held to determine the priority order in which the City will consider reviewing applications submitted by the Collectives. The lottery will simply establish an order and sequence for administratively processing the applications. The City Manager will publish the date, time and place for the drawing, as well as the results of the drawing. The proposed Application Processing Fee covers the costs for staff to review the application and for the Police Department to perform preliminary background checks, but it does not include any subsequent fees for fingerprinting

**HONORABLE MAYOR AND CITY COUNCIL**

**Subject:** Medical Marijuana

April 1, 2011

Page 7 of 9

and more extensive background work should an application require such work. The Application Processing Fee is completely separate from the Annual Operating Fee.

**Operational Regulations:** Finally, staff is bringing forward the following changes which amend the December 2010 draft ordinances to address some of the Collectives' concerns and to improve upon the ordinance:

- The requirement for owners and managers to submit a residential address was deleted due to privacy concerns.
- The requirement that each Collective have on-site security during all hours of operation was deleted. This change was made to provide the Collectives with the option of hiring or not hiring private security.
- Language was added to the security provisions prohibiting individuals from possessing firearms while on the premises without first being authorized in writing by an appropriate state or local agency to do so and without first providing the Chief of Police with a copy of such authorization.
- Language was added to the packaging provisions clarifying that the information that must accompany the medical marijuana be placed on the bottle's label or contained in a leaflet provided with the Medical Marijuana in English, Spanish and Vietnamese.

The remaining qualifications for successful registration (including criminal background checks, submission of operational, management and security plans, and identification of on-site managers) will remain the same as proposed by staff in December 2010.

***Schedule***

If the City Council determines that it would like to initiate amendments to Title 20, staff will work to schedule this issue at an upcoming April or May Planning Commission meeting. It is anticipated that the proposed ordinance and Planning Commission report will be presented to the City Council in June. If more time is needed to take action on the regulations, staff recommends that this work be completed between April through May so that a complete regulatory program can be in place and staff can focus on implementation on a complete set of regulations.

***Registration Application Processing Fee & Annual Operating Fee***

As stated at the March 30<sup>th</sup> Rules Committee meeting, staff recommends charging a non-refundable Application Processing Fee. All Collectives will be required to submit an Application Processing Fee, but only those actually reviewed will be assessed the fee. The proposed Application Processing Fee should appropriately cover the cost to review each application and, as stated at the Rules Committee meeting, the figure may be revised via a Supplemental Report. At this time, staff is working to apply to the \$2400 fee the appropriate overhead rates for various departments and to capture a methodology to cover the cost for applications that require more extensive Police Department backgrounding work/investigation.

**HONORABLE MAYOR AND CITY COUNCIL**

**Subject:** Medical Marijuana

April 1, 2011

Page 8 of 9

Below is a sample of Medical Marijuana application fees for other California Cities:

**Table 5: Medical Marijuana Application Fees for Other California Cities**

<b>City</b>	<b>Application Fee</b>
Napa	\$7,000
Sacramento	\$5,000
San Francisco	\$8,459
Stockton	\$3,500
Richmond	\$2,085

If Council were to adopt the regulatory provisions found at Parts 4 through 9 of the proposed new Chapter 6.88, a separate Annual Operating Fee would be charged to each Collective to fully recover the cost of Code Enforcement, the Police Department, the City Attorney, Finance, and the City Manager staff time dedicated to professional, policy, and legal review, as well as law enforcement of the regulations and any other issues that may surface as part of regulating Medical Marijuana. The FY 2011-2012 costs can not be determined at this time due to many factors, which supports staff's recommendation to issue a MBA at the appropriate time in the budget process.

**EVALUATION AND FOLLOW-UP**

As noted in the June and December 2010 staff reports, program evaluation is integrated into the proposals with a two year evaluation, with potential amendments, formally presented to the City Council.

**PUBLIC OUTREACH/INTEREST**

This issue falls under the Community Engagement Policy established by the City Council. Community outreach has been conducted to obtain input, as discussed in the materials posted for the December 13, 2010 City Council Study Session. At the February 2011 Rules and Open Government Committee meeting, staff noted that no additional outreach would be conducted. The proposed ordinances are posted to the Clerk's agenda webpage and a separate website has been developed that provides an inventory on all materials published by the City during the course of its consideration of medical marijuana regulations.

**COORDINATION**

This memorandum has been coordinated with the Office of the City Attorney and Finance Department..



**HONORABLE MAYOR AND CITY COUNCIL**

**Subject:** Medical Marijuana

April 1, 2011

Page 9 of 9

**CEQA**

Not a Project, File PP10-069(a), staff reports and informational memos.

/S/

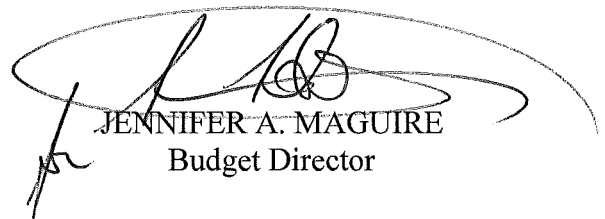
DEANNA J. SANTANA  
Deputy City Manager

/S/

CHRISTOPHER M. MOORE  
Chief of Police

/S/

JOSEPH HORWEDEL  
Director of Planning, Building  
and Code Enforcement



JENNIFER A. MAGUIRE  
Budget Director

*For more information, please contact Deanna J. Santana, Deputy City Manager, at 408-535-8280.*